



STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

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OFFICE OF PETITIONS

In re Application of
Atsuko Ohara et al.
Application No. 09/410,626
Filed: October 1, 1999
Attorney Docket Number: 21.1936/GMG

ON PETITION

This is a decision on the petition filed April 22, 2006, under 37 CFR 1.181, in accordance with the reasoning of the decision in Delgar Inc. v. Schuyler, 172 USPQ 513, or in the alternative, to revive the above identified application, under 37 CFR 1.137(b)¹.

The petition under 37 CFR 1.181 is **DISMISSED**.
The petition under 37 CFR 1.137(b) is **GRANTED**.

The above-referenced application was held abandoned on February 24, 2005 for failure to timely pay the issue fee in response to the Notice of Allowance mailed November 23, 2004. Accordingly, a Notice of Abandonment was mailed February 21, 2006.

The file record discloses that the Notice of Allowance was mailed to what was believed to be the address of record. However, petitioner contends that it was not received.

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

A review of the file reveals that the Notice of Allowance was mailed to the address of record on November 23, 2004, but was returned by the US Postal Service on November 30, 2004 as undeliverable. A further review of the file reveals that this application is associated with customer number 21171 but that a change of customer number address of record, using the address found on the petition was not updated until June 14, 2005.²

As petitioner has not presented any evidence that the address of record for customer number 21171 had been changed with the USPTO at the time the Notice of Allowance was mailed on November 23, 2004, and in the absence of petitioner showing that they acted responsibly with respect to providing the USPTO with up to date address, the showing of record is therefore insufficient to warrant withdrawal of the holding of abandonment.

With respect to the petition to revive, the petition fee in the amount of \$1500.00 has been charged to deposit account no. 19-3935.

All other requirements under 37 CFR 1.137(b) having been met, this matter is being referred to the Publishing Division to be processed into a patent.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in black ink that reads "Patricia Faison-Ball". The signature is written in a cursive, flowing style.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

²The address of record for customer number 21171 at the time the Notice of Allowance was mailed on November 23, 2004 was STAAS & HALSEY LLP, 700 11th St., N.W., SUITE 500, WASHINGTON DC 20231. As of June 14, 2005 the address of record for customer number 21171 was STAAS & HALSEY LLP, SUITE 700, 1201 NEW YORK AVENUE, N.W., WASHINGTON DC 20005